UNITED NATIONS

E/NL.1992/10
5 June 1992
ENGLISH ONLY*

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

NIGERIA

Communicated by the Government of Nigeria

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

COUNTERFEIT AND FAKE DRUGS (MISCELLANEOUS PROVISIONS) DECREE 1989

*Note by the Secretariat: The present document is a direct reproduction of the text communicated to the Secretariat.

V.92-55013

Supplement to Official Gazette Extraordinary No. 47, Vol. 76, 11th August, 1989—Part A

COUNTERFEIT AND FAKE DRUGS (MISCELLANEOUS PROVISIONS) DECREE 1989

Decree No. 17

[*See section* 12]

Commencement.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

Prohibition of sale, etc. of counterfeit and fake drugs.

1. Notwithstanding anything to the contrary contained in any law, enactment, or the Constitution of the Federal Republic of Nigeria 1979, as amended, any person who does any of the following things, that is to say—

(*a*) produces, imports, manufactures, sells, distributes, or is in possession of ; or

(*b*) displays for the purpose of sale,

any counterfeit, adulterated, banned or fake drug in any form whatsoever, shall be guilty of an offence under this Decree and shall be, accordingly, punished as stipulated in this Decree.

Prohibition of sale, etc. of drugs and poisons in certain premises or places.

2.—(1) Any person who, without the permission of the appropriate authority—

(*a*) hawks or sells ; or

(*b*) displays for the purpose of sale,

any drug or poison whatsoever in any open market, kiosk, motor park, roadside stall, bus, ferry or any other means of transportation or in any other place not duly licensed or registered for the purpose of sale and distribution of drugs or poisons shall be guilty of an offence under this Decree and shall be, accordingly, punished as stipulated in this Decree.

(2) In this section—

(*a*) reference to the "appropriate authority" means reference to the Minister of Health or any person or body authorised by him to give any required permission ; and

(*b*) reference to "permission" includes licence or registration.

Penalties, etc.

3.—(1) Any person who commits any offence under—

(*a*) section 1 (*a*) or (*b*) of this Decree shall on conviction be liable to a fine not exceeding ₦500,000 or to imprisonment for a term not less than 5 years nor more than 15 years or to both such fine and imprisonment ;

(*b*) section 2 (1) (*a*) or (*b*) of this Decree shall on conviction be liable to a fine not exceeding ₦5,000 or to imprisonment for a term not less than 2 years or to both such fine and imprisonment.

(2) Where an offence under section 1 or 2 of this Decree has been committed by a body corporate, every person who at the time of the commission of the offence was a proprietor, director, general manager, secretary or other similar officer, servant or agent of the body corporate (or a person purporting to act in any such capacity), he, as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

Jurisdiction. 1984 No. 20.

4. The Tribunal established under the Special Tribunal (Miscellaneous Offences) Decree 1984, as amended, shall have the jurisdiction to try offenders under this Decree.

Establishment of the Federal Task Force.

5. For the purposes of this Decree, there shall be constituted at the Federal level, a Task Force which shall consist of—

(*a*) a chairman who shall be an officer of the Federal Ministry of Health not below the rank of Assistant Director, to be appointed by the Minister ;

(*b*) two officers—

(*i*) one of whom shall be a military officer not below the rank of Lieutenant-Colonel to be nominated by the Chief of General Staff ; and

(*ii*) the other, a member of the Nigeria Police Force not below the rank of Chief Superintendent of Police, to be nominated by the Inspector-General of Police ;

(*c*) two inspectors not below the rank of Principal Pharmacist to be appointed by the Pharmacists Board of Nigeria ;

(*d*) two inspecting officers not below the rank of Principal Scientific Officer designated under subsection (1)(*c*) of section 9 of the Food and Drugs Act 1974 to be appointed by the Minister ; and

1974 No. 35.

(*e*) any other inspectors co-opted by the Federal Task Force.

Functions of the Federal Task Force.

6.—(1) The Federal Task Force shall be charged with the overall responsibility for enforcing the provisions of this Decree, which shall include—

(*a*) co-ordinating the activities of the State Task Forces ;

(*b*) directing and monitoring the activities of the State Task Forces ;

(*c*) paying unscheduled visits to all ports of entry and border posts ;

(*d*) powers to enter at any reasonable time (if need be by force) any premises in which there is reason to believe that the provisions of this Decree are being contravened and examining any article found therein ;

(*e*) taking sample or specimen of any article, and opening and examining while on the premises, any container or package ;

(*f*) examining any books, documents or records found on the premises, which are reasonably believed to contain any information relevant to the enforcement of this Decree and causing copies to be made thereof or extracts made therefrom ; and

(*g*) seizing any drug or poison which is counterfeit, adulterated, banned or fake.

(2) The Federal Task Force shall have power to seal up any premises used or being used in connection with any offence under this Decree until such time as the drug or poison, as the case may be, in the premises has been removed by the Federal Task Force or until such reasonable time as the Minister may determine in the circumstances.

Establishment of State Task Force.

7. There shall also be constituted at State or group of States level, a State Task Force which shall consist of—

(*a*) a chairman who shall be a military officer not below the rank of a Major to be nominated by the Chief of General Staff ;

(*b*) three officers one of whom shall be a member of the Nigeria Police Force not below the rank of Chief Superintendent of Police to be nominated by the Inspector-General of Police and the two remaining officers to be appointed by the Minister ;

(*c*) an inspector appointed by the Pharmacists Board of Nigeria ; and

(*d*) an inspecting officer designated under the provisions of subsection (1) (*c*) of section 9 of the Food and Drugs Act 1974 to be appointed by the Minister.

1974 No. 35.

Functions of the State Task Force.

8.—(1) The State Task Force shall be charged with the overall responsibility of enforcing the provisions of this Decree, which shall include—

(*a*) seizing any drug or poison which is displayed for the purpose of sale in any premises not duly licensed or registered for that purpose ;

(*b*) powers to enter at any reasonable time (if need be by force) any premises in which there is reason to believe that the provisions of this Decree are being contravened and examining any article found therein ;

(*c*) taking sample or specimen of any article and opening and examining, while on the premises, any container or package ;

(*d*) examining any books, documents or records found on the premises which are reasonably believed to contain any information relevant to the enforcement of this Decree and causing copies to be made thereof or extracts made therefrom ; and

(*e*) seizing any drug or poison which is counterfeit, adulterated, banned or fake.

(2) The State Task Force shall have power to seal up any premises used or being used in connection with any offence under this Decree until such time as the drug or poison, as the case may be, in the premises has been removed by the State Task Force or until such reasonable time as the Minister may determine in the circumstances.

Forfeiture of drugs, etc.

9. Any drug or poison seized by the Task Forces established by this Decree shall be forfeited to the Federal Military Government and shall be dealt with in such manner as the Minister may, from time to time, determine.

Interpretation.

10. In this Decree, unless the context otherwise requires—

(*a*) "a drug or drug product" is adulterated if—

(*i*) the methods used in, or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice (GMP) to assure that such drug meets the requirements of the Food and Drugs Act 1974 as to the safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess ; or

(*ii*) it purports to be or is represented as a drug, the name of which is recognised in an official compendium, has its strength differing from, or its quality or purity falling below the standard set forth in such compendium ; or

(*iii*) consists in whole or in part, any filthy, putrid or decomposed substance or has been prepared, packaged or stored under insanitary conditions where it may have been contaminated with filth or whereby it may have been rendered injurious to health or is packed in a container which is composed in whole or in part of any injurious or deleterious substance which may render the content injurious to health or bears or contains for the purposes of colouring only a colour other than one which is prescribed or contains any harmful or toxic substance which may render it injurious to health or has been mixed with some other substance so as to reduce its quality or strength ;

(*b*) "fake drug" means—

(*i*) any drug or drug product which is not what it purports to be ; or

(*ii*) any drug or drug product which is so coloured, coated, powdered or polished that the damage is concealed or which is made to appear to be better or of greater therapeutic value than it really is, which is not labelled in the prescribed manner or which label or container or anything accompanying the drug bears any statement, design or device which makes a false claim for the drug or which is false or misleading ; or

(*iii*) any drug or drug product whose container is so made, formed or filled as to be misleading ; or

(*v*) any drug or drug product whose label does not bear adequate directions for use and such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of use ;

(*c*) "law enforcement officer" means—

(*i*) a police officer ;

(*ii*) an inspector appointed by the Pharmacists Board of Nigeria ;

(*iii*) an inspecting officer desginated as such under the provisions of subsection (1) (*c*) of section 9 of the Food and Drugs Act 1974 ;

(*d*) "Minister" means the Minister charged with responsibility for health matters.

Repeal of 1988 No. 21.

11. The Counterfeit and Fake Drugs (Miscellaneous Provisions) Decree 1988 is hereby repealed.

Citation and commencement.

12.—(1) This Decree may be cited as the Counterfeit and Fake Drugs (Miscellaneous Provisions) Decree 1989.

(2) The provisions of sections 5 to 10 of this Decree shall be deemed to have come into force on the 15th June 1988.

MADE at Lagos this 1st day of June 1989.

GENERAL I. B. BABANGIDA,
President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purport)

The Decree repeals the Counterfeit and Fake Drugs (Miscellaneous Provisions) Decree 1988 and provides for—

(*a*) the prohibition of the sale and distribution of counterfeit, adultrated, banned or fake drugs or poisons without a licence or registration ;

(*b*) stiffer penalties for the breach of the provisions of the Decree ;

(*c*) the establishment of Federal and State Task Forces charged with responsibility for seizing any drug or poison illegally displayed for sale in any unlicensed or unregistered premises, amongst other things.